REMARKS:

Claims 12-17 are in the case and presented for consideration.

Claims 12 and 14-16 (and claim 17) stand rejected under 35 U.S.C. 103(a) as being obvious over Devro in view of Sinibaldo. The basis of this rejection is that it purportedly would have been prima facie obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of Sinibaldo into that of Devro in order to space the perforations of Devro from about 5 mm to about 45 mm. It is submitted that any such modification of Devro would have been directly contrary to the Devro's own teaching.

Devro was well aware of the criticality of the size, spacing, and pattern of the perforations in the collagen film. Thus, for example, Devro states "that larger perforations tend to reduce the strength of the collagen film to an acceptable level" and also release too much liquid during cooking" (Devro, p.4). So, too, Devro states that the "perforations should be arranged in a pattern which maximizes the distance between perforations" *Id* (emphasis added).

Most significantly, Devro states that:

> "each perforation is spaced 20 to 100 mm from its closest neighbor. In preferred embodiment, the holes are spaced 30 to 90 mm apart in the longitudinal direction and 16 to 60 mm apart in the transverse direction"

Id.

Thus, Devro's preferred perforation spacing of 20 to 100 mm significantly exceeds applicant's claimed perforation spacing of 3 to 14 mm. And, according to the teaching of Devro, if anything, the distance of its perforated spacing should be maximized, not minimized. Yet, the purported combination of Devro and Sinibaldo would minimize the

perforation spacing of Devro. That is so because the proposed combination of Devro and Sinibaldo would reduce perforation spacing of Devro from a spacing of 20 to 100 mm to a spacing of 5 mm to 45 mm.

It is respectfully submitted that it would not be obvious to modify Devro so that its perforation spacing would be reduced in this manner. In determining if an invention is obvious in view of the U.S. Supreme Court's decision in *KSR v. Teleflex,* some reason must be given for showing why a person of ordinary skill in the art would make the combination of Devro and Sinibaldo. In this case there is a good reason why the combination would *not* be made, namely due to the actual teaching of Devro to keep the perforations further apart.

Claims 12 and 14-16 (and claim 17) stand rejected under 35 U.S.C. 103(a) as being unpatentable over Devro in view of Sinibaldo and Andriash. For the same reasons, as discussed above, that Devro in view of Sinibaldo may not be properly combined, it is respectfully submitted that those references and Andriash would not render claims 12 and 14-16 unpatentable.

In further detail, the Examiner stated in the previous Office Action of May 18, 2007, that the difference between Devro and the present claim 12 is the particular spacing of perforations. Devro teaches in the longitudinal direction 30 to 90 mm and 16 to 60 mm in the transverse direction to minimize tear propagation from the holes. Thus, Devro is clearly teaching distances between perforation to avoid tearing of the collagen film, and thus teaching away of the content of claim 12 in respect of the distances between

perforations comprised between 3 mm and 14 mm.

In the current Final Rejection, the Examiner is of the opinion that the skilled person would have learned from the content of Sinibaldo, that the spacing of perforations on a flattened tubular food casing should be preferably at least about 50 times greater than the diameter of the formed perforations; and the Examiner combines this technical element with the method of Devro who discloses perforations having a diameter less than 0.9 and of lower limit 0.1 (0.1 mm x 50 = 5 and 0.9 mm x 50 = 45) and concludes that the spacing between perforations of 3 and 16 mm would have been prima facie obvious. It is thus held that the claimed invention as a whole (claim 12) would have been obvious to the person of ordinary skill in this art at the time the invention was made.

In the contrary, however, it is believed that a prima facie obvious case has not been made. There is not proper reason to combine the teachings of Devro and Sinibaldo, let alone any motivation to do so.

In combining Devro and Sinibaldo under 35 U.S.C. 103, the Examiner is believed to have applied an element of Sinibaldo that is out of the context, namely the teaching "preferably at least about 50 times greater than the diameter of the formed perforations," while disregarding the whole content and teaching of Sinibaldo.

Sinibaldo teaches a method for cutting perforations in a flattened web of tubular food casing. According to Sinibaldo casings are typically obtained from regenerated cellulose that can have fibrous webs embedded in their walls to impart greater wall strength, and thus the so called "fibrous food casings." It is a well know fact in the art that the requirements of a tubular food casing compared to the requirements of a wrapping

food

film are very different, since for instance, tubular casings shall resist great internal pressure in all directions of the tubular casing when stuffing and processing than wrapping food films do, and at the same time, some perforations are needed to drain water, fat, steam, air produced during or after processing. Accordingly, why should an skilled person transfer (and combine) a technical characteristic of a tubular casing to a wrapping film, when faced with the problem of the present invention, of providing a multiperforated collagen wrapping food film which drains air, steam, and maintains sufficient mechanical strength and extensibility for processing?

Sinibaldo is completely silent about other tubular casings made of other materials in the specification others than cellulose. Thus, Applicants cannot agree with the Examiner when it is held that the teachings of Sinibaldo may be applied to any well known food casing material, and even if, Applicants are transferring a technical element of a tubular casing to a food wrapping film, and not to a tubular casing.

Sinibaldo is teaching a mechanical method for cutting perforations in a flattened tubular casing. Thus it is obvious that the method produces two different kinds of perforations, inwardly disposed vent flaps in the upper ply (substantially free of inwardly disposed vent flaps as stated in col. 1, line 52) and outwardly disposed flaps in the bottom ply (please see col. 5, lines 49-51 wherein it is stated ".." bottom ply of casing material extending outwardly from the surface of the food casing"). These perforations are thus different in the upper ply and in the bottom ply, and moreover it is also well known that the presence of ragged edges which are inherent to the mechanical process, increase the

possibility of tear propagation.

Clearly the person of ordinary skill in the art contemplated by 35 U.S.C. 103 as most recently interpreted by *KSR v. Teleflex*, would not be motivated to transfer the spacings between perforations disclosed in a flattened tubular food casing having two different kinds of perforations, to a film for wrapping food of collagen, having just one kind of perforations, and without edges due to the use of laser, and would not even have a reason to do so.

Applicants also disagree with the Examiner holding that there is no limitation of the method of Sinibaldo to cellulose tubular casing, or no criticality associated to using a cellulosic casing. There is, in fact, an implicitly limitation to tubular casings, and to cellulose, in as much as no other materials, like food wrapping films are disclosed or mentioned in Sinibaldo, just flattened tubular casing, and in as much as no other material is disclosed or mentioned besides cellulose or cellulose with embedded webs.

Thus, Sinibaldo discloses explicitly only "a flattened web of tubular fibrous food casing" (col. 4, l. 55; col. 5, l. 9; 15).

The Examiner is also of the opinion that Sinibaldo's patented claim 1 is not limited either to cellulosic casing.

Applicants respectfully submit the following arguments in this connection.

The teachings of a document are contained in the specification and examples of a patent which disclose an invention and its contribution to the state of the art, whereas the function of the claims is to define the subject-matter for which protection is sought. It is common practice to try to make the scope of protection as broad as possible based on

particular embodiments of the invention. But it is not function of the claims to disclose the invention. There is no implicit or explicit disclosure or teachings in the specification of Sinibaldo of other possible materials as the cellulosic one, and those teachings are related only to casings.

Summarizing, nothing in Sinibaldo which would suggest or motivate the skilled person to transfer the "spacing of perforations" made by die cutting method of a flattened tubular casing typically obtained from regenerated cellulose, to a method of perforating by laser a flat film based on collagen for wrapping food to provide the method of claim 12.

Claims 14, 15, 16 and 17 are dependent on claim 12 and further distinguish the invention over any obvious combination of Devro and Sinibaldo.

The Examiner rejects claim 13 as obvious over Devro in view of Sinibaldo and further in view of Andriash. The Examiner holds that Andriash teaches a carbon dioxide laser to perforate a sheet material, and its combination with Devro and Sinibaldo renders claim 13 obvious. As argued above, it si believe that a skilled person in this art would not find suggestion or motivation to combine Devro and Sinibaldo, by modifying the method of Devro by the introduction of an element disclosed in Sinibaldo. This leaves the combination of Devro and Andriash. It is respectfully submitted that the combination of both, does not render the subject-matter of claim 13 obvious, since Andriash discloses a laser sheet perforator, and is not related with perforated wrapping food films based on collagen.

The Examiner has also rejected claim 17 as obvious over Devro in view of Sinibaldo and further in view of Andriash. Claim 17 is dependent from 12, that is, it contains all the

technical characteristics of claim 12 from which it depends, and a further technical characteristic related to the continuous way of perforating the film. Thus as claim 12 is considered non-obvious, for the same reasons as above, dependent claim 17 should be considered non-obvious as well.

Addressing now the objections to some of the IDS references filed 8/9/07 please not that document DE19970403, was an error, since this document does not exist.

With reference to the attached further IDS, for DE642922 attached is an English translation of the title and the claims. This reference is relevant for teaching a laminar product but is over-wise not material to the clams presented here. From the same family as DE1945527 the corresponding GB1234358 is cited. From the same family as DE970263 the corresponding US Patent 2,477,767 is cited. From the same family as WO95/17100 the corresponding US Patent 5,736,180 is cited. From the same family as EP 0 711 321 the corresponding WO 95/04102 (Devro) is cited.

It is respectfully submitted that the application and claims are now in condition for allowance, and favorable action is respectfully requested. The Examiner is repectfully urged to telephone the undersigned if any matters remain, in the interest of reaching a conclusion to the prosecution of this case.

Dated: March 11, 2008

Respectfully submitted,

/PETER C. MICHALOS/
Peter C. Michalos
Reg. No. 28,643
Attorney for Applicants
ph. (845) 359-7700

NOTARO & MICHALOS P.C.
100 Dutch Hill Road, Suite 110
Orangeburg, New York 10962-2100

Customer No. 21706

M:\PAT-AMD\G80-042\PCM-Amd2.wpd